

CASE SUMMARY

Varian Medical Systems, Inc. v. Delfino
S121400

To Be Argued on Tuesday, December 7, 2004, 2:00 p.m. Session

Many people who have been fired from a job dream of taking revenge against the employer. Few people try. When Varian Medical Systems (Varian) fired Michelangelo Delfino, his friend Mary Day quit her job at Varian, and the two began posting thousands of Internet messages making derogatory statements about Varian and personal attacks on several of its executives. Varian and the executives (collectively Varian) sued Delfino and Day for libel, which means publishing false written statements that damage a person's or business's reputation. Varian won a judgment in a jury trial against Delfino and Day for \$775,000.

Delfino and Day appealed the judgment and attacked it with many arguments, but the Court of Appeal affirmed the judgment. The two then sought review from the Supreme Court. The Supreme Court granted review, limited to one issue, whether Delfino and Day's earlier appeal from the order denying their motion to terminate (strike) the suit should have stopped (stayed) the case so the trial should never have taken place.

The First Amendment to the United States Constitution protects some of the most important personal, political, and religious rights of the American people. Among those rights are free speech, freedom of the press, and the right to work together (assembly) to affect government decisions. In the 1990's, the Legislature observed that some well-financed organizations were using lawsuits to scare people out of exercising their First Amendment rights. For example, some real estate developers were suing people who argued at city council and similar meetings that projects violated environmental laws or were unwise for other reasons. The businesses that filed these suits did not care whether they won—they just wanted to scare off opposition by the cost of defending suits. The Legislature gave such suits the clever name SLAPP, which stands for strategic lawsuit against public participation.

To protect people who exercise their First Amendment rights, the Legislature adopted a law called the anti-SLAPP law. That law allows a defendant who is sued for speaking out (individually or with an advocacy group) on a public issue to move to strike the complaint. If the defendant shows that the supposed wrongdoing alleged in the complaint involved First Amendment conduct related to a public issue, the plaintiff can only continue its suit if it can prove it will probably

win. For example, a developer normally could not prove it would probably win if it sued a project protester for saying the project would increase traffic congestion because that is normally a reasonable opinion about most housing development projects. But a developer normally could prove it would probably win if it sued a protester for saying the developer's president was a convicted rapist because the statement about a criminal conviction could be proved absolutely false. The Legislature made the denial of an anti-SLAPP motion one of the few orders that can be appealed before the final judgment in a case.

Here, Delfino and Day moved to strike Varian's complaint under the anti-SLAPP law. They claimed that their Internet comments about Varian were statements about a public issue. Varian argued that it is a company in business to make a profit, and neither its financial condition nor the personal lives of its employees is a public issue. Varian also argued that it would probably win because Delfino and Day published statements of supposed fact that were absolutely false, so the First Amendment did not protect those statements. The superior court agreed with Varian and denied the motion to strike the complaint.

Delfino and Day appealed. When they appealed, they argued in the superior court that all further proceedings leading toward trial were automatically stayed. They relied on a general appellate procedure statute, Code of Civil Procedure section 916, that provides proceedings are stayed to the extent they are "embraced" in or "affected" by the appealed issue. The superior court disagreed and allowed the case to proceed to trial.

Varian convinced the jury that Delfino and Day posted false factual statements that were not protected by the First Amendment. Varian received a judgment of \$775,000. The Court of Appeal, which had not decided the appeal from the order denying the anti-SLAPP motion, dismissed that appeal because it concluded all the pretrial proceedings were meaningless after the judgment.

Delfino and Day appealed from the judgment. Among other arguments, they contended the superior court had no power (sometimes called jurisdiction) to conduct a trial because their first appeal stayed all activity in the superior court. They lost on this issue in the Court of Appeal and petitioned for review. The Supreme Court agreed to decide only that issue.

Delfino and Day argue that an appeal from the denial of an anti-SLAPP motion must *always* result in a stay of all superior court proceedings. They say that is the specific intent of the Legislature. They argue this result is necessary so that the defendant does not have to spend money on attorney fees while the Court of Appeal decides whether the case should have been terminated.

Varian argues that the Legislature did not intend that all proceedings in the superior court be stayed every time an appeal is taken from the denial of an anti-SLAPP motion. Varian argues that the superior court should decide whether to stay the proceedings based on what is most fair to all parties under the specific circumstances of the case. Varian claims that Delfino and Day filed their motion to strike, and appealed the ruling denying that motion, as a delay tactic and to aggravate Varian. Parties with such an improper motive should not, according to Varian, be rewarded with a stay of the superior court proceedings, and a significant delay of trial as a result.